



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Authorize Staff to Commence Negotiations with Central Valley Waste Services (Waste Management) to Exercise Contract Renewal Option

MEETING DATE: December 19, 2007

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Authorize staff to commence negotiations with Central Valley Waste Services (Waste Management) to exercise contract renewal option.

BACKGROUND INFORMATION: Under the existing franchise agreement for solid waste services with Central Valley Waste Services (Waste Management), the City has the option of renewing the agreement for seven-year increments by giving notice no later than 12 months prior to the expiration of the current term. The current term of agreement is set to expire on March 31, 2010, so a notice of renewal must occur before March 31, 2009, yet it is not too early to begin discussions on the next contract term and its conditions. Per Public Resource Code 40059 (copy attached), the City may determine the solid waste services to be provided without competitive bidding. The City has traditionally negotiated solid waste franchise agreements and renewals with Central Valley Waste Services and its predecessors.

In preparation for this discussion, staff recently conducted a survey of surrounding cities to compare rates and services included in their contract, franchise fees and whether or not their current contracts were bid out or negotiated. The majority of the cities surveyed had obtained their current contract through negotiations with the hauler. In comparison with other Central Valley cities, our rates (standard residential) fall in the middle at \$21.19 with City of Tracy having the highest rates at \$29.45 and City of Elk Grove with the lowest at \$17.10. Of the cities that had a franchise fee in their contracts, the City of Lodi was the lowest at 4.8% and the highest was City of Stockton at 20%. There was a wide variety of additional services that were included in each city's contract, which ranged from street sweeping, seasonal leaf and Christmas tree collections to dead animal pick-up. There were many of the same components in each city's contracts, such as the city billing for the service and yearly rate increases based on CPI. Of the cities surveyed, only one other city had an agreement with our same contracted hauler, Waste Management. Attached is the complete survey.

Recently, the question of "bid or negotiate?" was circulated on the League of California Cities City Manager's List Source. The informal comments ranged considerably. Certainly, dissatisfaction with a current provider was a good reason to bid the service.

Other reasons for bidding solid waste services included encouraging competition between the haulers and possibly providing the lowest rates. There are, however, downsides to bidding the service as well, such as a tough transition period with a new hauler not only for the City but also for its customers, a possible lack of service consistency, and the high costs in obtaining a consultant for the bidding process. There are many advantages to negotiating, such as adding more services and/or enhancements to the contract while maintaining current costs without having the disruption of changing service providers.

APPROVED: _____
Blair King, City Manager

And, there is no guarantee of obtaining a lower rate through the bidding process. Most significantly, negotiating with the current provider before the renewal date gives the City the most leverage in improving services within the current rate structure.

If Council authorizes commencement of negotiations, staff would allow up to nine months and would provide periodic updates to the Council. If satisfactory terms cannot be reached within this time frame, staff would recommend the selection of a consultant to prepare a comprehensive request for proposals and commence solicitation of proposals. This process would take an additional six to eight months.

FISCAL IMPACT: None at this point.

FUNDING AVAILABLE: None required.

Richard C. Prima, Jr.
Public Works Director

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Attachments
cc: Thom Sanchez, Central Valley Waste Services

CALIFORNIA CODES
PUBLIC RESOURCES CODE
SECTION 40059

40059. (a) Notwithstanding any other provision of law, each county, city, district, or other local governmental agency may determine all of the following:

(1) Aspects of solid waste handling which are of local concern, including, but not limited to, frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location, and extent of providing solid waste handling services.

(2) Whether the services are to be provided by means of nonexclusive franchise, contract, license, permit, or otherwise, either with or without competitive bidding, or if, in the opinion of its governing body, the public health, safety, and well-being so require, by partially exclusive or wholly exclusive franchise, contract, license, permit, or otherwise, either with or without competitive bidding. The authority to provide solid waste handling services may be granted under terms and conditions prescribed by the governing body of the local governmental agency by resolution or ordinance.

(b) Nothing in this division modifies or abrogates in any manner either of the following:

(1) Any franchise previously granted or extended by any county or other local governmental agency.

(2) Any contract, license, or any permit to collect solid waste previously granted or extended by a city, county, or a city and county.

40059.1. (a) The Legislature hereby finds and declares both of the following:

(1) In 1989, the Legislature enacted this division as the California Integrated Waste Management Act of 1989. One of the key provisions of this division is that each local agency has the responsibility for diverting 50 percent of all solid waste generated within the local agency by January 1, 2000.

(2) The public policy objective of the Legislature in enacting this section is to ensure that those local agencies that require an indemnity obligation retain their responsibility for implementing the diversion requirements of this division.

(b) For the purposes of this section, the following terms have the following meanings:

(1) "Indemnity obligation" means any indemnity obligation directly or indirectly related to the failure of a local agency to meet the solid waste diversion requirements imposed by Chapter 6 (commencing with Section 41780) of Part 2, that is expressly assumed by, or imposed upon, the solid waste enterprise, whether pursuant to ordinance, contract, franchise, license, permit, or other entitlement or right, for the benefit of the local agency.

(2) "Local agency" means any county, city, city and county, district, regional agency as defined in Section 40181, or other local government agency.

(c) Any provision, term, condition, or requirement contained in any ordinance, contract, franchise, license, permit, or other

entitlement or right adopted, entered into, issued, or granted, as the case may be, by a local agency for solid waste collection and handling, including the recycling, processing, or composting of solid waste, or in any request for bids or proposals in connection with any such contract or franchise, that authorizes or requires the imposition of an indemnity obligation, shall, notwithstanding any such provision, term, condition, or requirement, be subject to all of the following restrictions:

(1) An indemnity obligation shall not be enforceable if the board imposed penalty is based solely upon the failure of the local agency to establish and maintain a source reduction and recycling element pursuant to Chapter 2 (commencing with Section 41000) of Part 2, Chapter 3 (commencing with Section 41300) of Part 2, or Section 41750.1, as the case may be.

(2) Any board imposed penalty based upon a local agency's failure to meet the solid waste diversion requirements imposed by Chapter 6 (commencing with Section 41780) of Part 2, resulting in whole or in part from the solid waste enterprise's breach of contract or noncompliance with any other authorization, shall be apportioned in accordance with the percentage of fault of the local agency and the solid waste enterprise.

(3) For purposes of this section, a solid waste enterprise is not liable for the indemnity obligation to the extent that the solid waste enterprise's breach or noncompliance resulted from the action or failure to act of the local agency.

(4) No payment required or imposed pursuant to an indemnity obligation, whether required or imposed by ordinance, contract, franchise, license, permit, or other entitlement or right, may exceed that portion of any penalty assessed by the board against the local agency that was caused by the solid waste enterprise's breach or noncompliance of an express obligation or requirement.

(5) No indemnity obligation shall be enforceable against a solid waste enterprise until the local agency has affirmatively sought, in good faith, all administrative relief available pursuant to Chapter 6 (commencing with Section 41780) and Chapter 7 (commencing with Section 41800) of Part 2, unless the local agency demonstrates good cause, based on substantial evidence in the record, for not pursuing that administrative relief. The solid waste enterprise shall cooperate, in good faith, with the local agency seeking that administrative relief and shall provide in writing to the local agency all known defenses to the imposition of penalties.

(d) Nothing in this section shall be construed to preclude either party from seeking any other remedy under law or equity.

(e) The provisions of this section are not subject to waiver, and any attempted waiver shall be null and void as against public policy.

(f) This section is not intended to do any of the following:

(1) Add to or expand the authority of local agencies to determine aspects of solid waste collection and handling pursuant to Section **40059**.

(2) Alter the authority of business entities to collect or process materials that are not solid waste.

(3) Affect any contract right existing on the effective date of this section.

Agency	Provider, customer base	Bid or Negotiate?	Std. Residential Rate	Standard Residential Service	Price Escalation Provision	Billing (by City or Contractor?)	Additional Services Included	Landfill info	Franchise Fee	Diversion Rate
City of Lodi	Central Valley Waste Services (Waste Management); All residential and commercial (does not include defined industrial customers)	Negotiated current contract with WM prior to expiration of the existing contract at the time.	\$21.19	3-cart system, 38 gal. refuse 1x week, alternating recycling/garden 1x week	Yearly increase by percentage amount equal to 80% of the annual change in the Consumer Price Index	Billed by City on utility bill	Source Reduction & recycling Element & related documents; Illegal dumping pickup on public & railroad property; annual curbside collection; annual transfer station voucher; annual dump @ reduced fee; City leaf disposal up to 1,200 tons/year; payment for billing services; low income discount	Contract specifies that all materials except items retained for recycling must be taken to North County Landfill or other sites that City may designate	4.80%	58%
City of Stockton	Waste Management & Allied Waste have exclusive residential & commercial franchises. On the residential side, WM's franchise covers east of El Dorado Street & AW's covers west of El Dorado Street. On the commercial side, WM & AW franchises cover entire City. Franchises do not include industrial manufacturing & construction & demo. collection.	We had WM and AW separately submit prices for each service. We then accepted the low bid for each service	\$19.75 per month for 30 gallon wheeled cart, \$25.00 per month for 60 gallon wheeled cart, \$30.24 for 90 gallon wheeled cart. If customer does not specify their solid waste cart size, they receive a 60 gallon cart by default.	3 cart system, weekly service of 60 gallon Recycling cart, 90 gallon Green & Food waste cart, & customer choice of 30-60-90 gallon Trash cart (if customer does not specify they receive a 60 gallon trash cart).	Annual rate adjustment each June 1, equal to 50% of the change in the Consumer Price Index for San Francisco, Oakland, San Jose for all urban consumers.	For residential, billed by either the City of Stockton or California Water Service. WM & AW bill commercial.	Annual Neighborhood Clean Sweep (bulky item pickup including CRTs, E-waste, and appliances); Twelve extra service stickers per year to use for free extra waste pickup; Seasonal leaf collection; Christmas Tree Collection & recycling; Senior discount; City-wide street sweeping services. All City owned facilities receive free service; C.I.W.M.B. Annual Report preparation; Free service for 5 special events per year & 6 community clean up events per year plus post-event street sweeping.		20% (franchise fee)+ 3.5% (AB 939 fee)	54%

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City of Tracy	Tracy Delta Solid Waste Management, Inc (Tracy Disposal) All residential, industrial and commercial accts.	The last contract was negotiated in 2002-2003 by BVA Consultants	\$29.45	3-cart system, 60 gal. refuse 1x week, alternating recycling/garden 1x week	No provision. According to contract staff will ask Council for rate increase approval when needed, according to bond covenants and fund balance.	Monthly billing is a function of the City.	Exclusive Franchise Agreement is also tied to City MRF. Disposal Co. also operates the MRF and ensures compliance of all solid waste regulations including on-site composting. Additional services include free cardboard/paper pick up for residential and commercial customers, free christmas tree pick-up program, large appliance disposal voucher program; Spring and Fall Clean-up; leaf-pick-up;free city use of MRF. Customer Service is also provided by the company at a local location.	The City of Tracy owns the Material Recovery Facility (MRF), but is privately operated. We have a three party agreement with San Joaquin County, City of Tracy and Mountain House for landfill and MRF usage with Tracy Disposal. In addition, we have a contract with the County when the Corral Hollow landfill shut down.	8.00%	67%
Elk Grove	Allied Waste	Negotiated current contract with Allied. Contract terms in 2011.	32 gallon - \$17.10 64 gallon - \$19.78 96 gallon - \$25.15	3-cart system. Resident chooses the size cart they would like upon initiation of service. Cart sizes available are 32 gal, 64 gal and 96 gal. Trash is serviced weekly..recycle and green waste rotate every other week.	No provision. According to contract staff will ask Council for rate increase approval annually.	Billed bi-monthly by Utility Billing Dept.	Annual Neighborhood Clean-up; free dump coupon at Elder Creek Transfer station 1x per year; Free e-waste events 4x per year; holiday tree collection; composting classes 4 x per year; curbside oil and used oil filter pickup; household hazardous waste facility access free of charge; up to two recycle and 2 green waste carts free of charge; seniors and person's with disability - free porch pick-up service.	Wste is forwarded to Froward Landfill in Manteca	10.00%	59%
Galt	California Waste Recovery & all rights to service residential, commercial	Negotiated. Extended contract with current provider.	\$20.41	3-cart system, 64 gal. refuse 1x week, alternating recycling/garden 1x week	annual adjustment based on "annual disposal element". Calculation involving the tipping fees paid by contractor, revenues collected and a refuse rate index.	Residential billed by City	Curbside e-waste & u-waste collection two times a year, neighborhood clean-up services (provide 20-yard bin for City events, up to 6 a year), X-mas tree collection, refuse & recycling services at two City events per year, HHW events up to two a year (City responsible for disposal costs), dead animal pick-up, commercial waste audits (24 businesses a year), planning dept. review services, public outreach & education	Contractor may select and notify City of disposal facility	2% through Feb. 2008, then 10%	50%

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City of Davis	Davis Waste Removal Company. Residential and Commercial	Re-negotiated current contract.	\$25.36	3-cart system, 90 gal. refuse recycling & garden waste 1x week	annually adjusted, cpi based less a landfill component. Alternative bi-annual adjustment.	billed by contractor	Street sweeping, bulky item turn in program,	Unless directed otherwise by City, use Yolo County Landfill	n/a	45%
City of Modesto	Gilton Solid Waste and Bertolotti Disposal have exclusive Service Agreements with Service Areas for residential and commercial services. Industrial waste is open to competition between our 3 licensed haulers, Bertolotti Disposal, Gilton Solid Waste and Bonzi Inc. Bonzi Inc. is only licensed to service Industrial waste	Negotiated - All long term agreements.	\$19.82	A 96 gallon toter for garbage/recyclables, a 96 gallon toter for green waste, blue bags for recycling, kitchen countertop container for food scraps, TV and tire collections, 2 bulky items pickups per year.	Rates are reviewed annually. No guaranteed upward adjustment, however, each hauler is guaranteed an 11.11% profit margin.	City bills under contract with the haulers for residential services only.	N/A	All waste is flow controlled under the Service Agreements to be taken to the Covanta Waste-to-Energy Facility.	10.00%	Last CIWMB approved rate was in 2004 at 54%.
City of Manteca	Municipally operated	n/a	\$19.78	3-cart system, 32 gal. refuse 1x week, alternating recycling/garden 1x week	3% annually	City	E-waste drop-off, battery drop-off, appliance pick-up, bulky item pick-up, curbside oil pick-up, X-mas tree pick-up, Fee 2yd bin once a year to every resident, city-wide street sweeping, seasonal leaf pick-up, extra trash pick-up stickers (3) every year, extra recycling & green waste carts provided free, collection at City wide events (street fair, pumpkin fairm, etc.)	all taken to Forward Landfill	n/a	50%